

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Conway	Team: Team # 6	CCRB Case #: 201304966	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/05/2013 6:18 PM	Location of Incident: 14th Avenue and 124th Street; 109th Precinct stationhouse	Precinct: 109	18 Mo. SOL 12/5/2014	EO SOL 12/5/2014	
Date/Time CV Reported Thu, 06/06/2013 2:14 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/06/2013 2:14 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Roby	15587	940649	109 PCT
2. POM Jason Ragoo	01854	939268	109 PCT
3. SGT Michael Elderbaum	03084	901505	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michelle Kemp	00526	910836	109 PCT
2. POM Gino Oleary	01282	949414	109 PCT
3. POM Dimitrios Sotiriou	03690	949684	109 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Roby	Abuse: PO Brian Roby drew his gun in the vicinity of 124th Street and 14th Avenue in Queens.	
B.SGT Michael Elderbaum	Abuse: Sgt. Michael Elderbaum authorized a strip search of § 87(2)(b) inside the 109th Precinct stationhouse.	
C.POM Brian Roby	Force: PO Brian Roby used physical force against § 87(2)(b) inside the 109th Precinct stationhouse.	
D.SGT Michael Elderbaum	Force: Sgt. Michael Elderbaum used physical force against § 87(2)(b) inside the 109th Precinct stationhouse.	
E.POM Jason Ragoo	Force: PO Jason Ragoo used physical force against § 87(2)(b) inside the 109th Precinct stationhouse.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On June 6, 2013, § 87(2)(b) filed this complaint with the CCRB, on behalf of her son § 87(2)(b) using the online complaint form. At 6:18 p.m. on June 5, 2013, § 87(2)(b) was arrested at 14<sup>th</sup> Avenue and 124<sup>th</sup> Street in Queens. § 87(2)(b) did not witness the incident. The following allegations resulted:

**Allegation A—Abuse of Authority: PO Brian Roby drew his gun in the vicinity of 14<sup>th</sup> Avenue and 124<sup>th</sup> Street in Queens.**

§ 87(2)(g)

**Allegation B—Abuse of Authority: Sgt. Michael Elderbaum authorized a strip search of § 87(2)(b) in the 109<sup>th</sup> Precinct stationhouse.**

§ 87(2)(g)

**Allegation C—Force: PO Brian Roby used physical force against § 87(2)(b) inside the 109<sup>th</sup> Precinct stationhouse.**

**Allegation D—Force: Sgt. Michael Elderbaum used physical force against § 87(2)(b) inside the 109<sup>th</sup> Precinct stationhouse.**

§ 87(2)(g)

**Allegation E—Force: PO Jason Ragoo used physical force against § 87(2)(b) inside the 109<sup>th</sup> Precinct stationhouse.**

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

On November 15, 2013, a spinoff was made to IAB regarding the allegation of a cavity search generating CCRB #201310760.

This case was originally assigned to Investigator Frank Mesa. On July 30, 2013, it was reassigned to Investigator Cassandra Watson following Inv. Mesa's departure from the agency. On November 7, 2013, it was reassigned to Investigator Christopher Conway following Inv. Watson's departure from the agency.

## Results of Investigation

### Civilian Statements

#### Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old on the incident date. He is a Hispanic male who stands at 6'2 and weighs 220 pounds with black hair and brown eyes.

#### Statement to medical personnel

In § 87(2)(b)'s ambulance call report, EMT § 87(2)(b) wrote "Patient is alert and states that got assaulted by PD while being arrested...patient states that incident took place three hours ago...no other injuries noted or stated." EMT § 87(2)(b) quotes § 87(2)(b) as saying, "I cannot see out my left eye and have pain."

#### Testimony from CCRB interview and 50H hearing

On July 3, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 6b). On August 20, 2013, he provided another detailed statement by phone to clarify the first statement (encl. 6c-d). On December 31, 2013, he provided a statement in his 50H hearing (encl. 23a-ad). § 87(2)(b)

Around 6:00 p.m. on June 5, 2013, § 87(2)(b) was walking home from his job in demolition for NYC Restoration. § 87(2)(b) was walking with his friends who he knew from his neighborhood, but whose real names he did not know; the investigation determined their names were § 87(2)(b) and § 87(2)(b). § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) was not under the influence of any drugs or alcohol.

The four men bought cigars from a grocery store on 18<sup>th</sup> Avenue and College Point Boulevard in Queens (not mentioned in CCRB statement), and then walked east to buy heroin from a neighborhood drug dealer on the street. § 87(2)(b) did not know the dealer, but § 87(2)(b) and § 87(2)(b) knew him; § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) bought 12 bags of heroin, which was packaged in small wax paper bags. He placed them in his waistband, so they were kept in place with the elastic of his shorts. § 87(2)(b) and § 87(2)(b) also bought their own heroin, and after buying the heroin, § 87(2)(b) and § 87(2)(b) went separate ways from § 87(2)(b) and § 87(2)(b).

As § 87(2)(b) walked home near the church on 14<sup>th</sup> Avenue and 124<sup>th</sup> Street, his friend § 87(2)(b) (identified through investigation as § 87(2)(b)) offered him a ride in his car. § 87(2)(b) and § 87(2)(b) entered the car and sat with § 87(2)(b) and a coworker whose name § 87(2)(b) declined to provide (§ 87(2)(a) Gen.Mun. §50-H(3)). As soon as § 87(2)(b) entered the car, a plainclothes officer approached before the car could move. The officer, who § 87(2)(b) later identified as PO Brian Roby, approached the front of the car on foot with his gun drawn and told § 87(2)(b) and § 87(2)(b) to get out of the car. § 87(2)(b) described PO Roby as a plainclothes white male in his 30s, standing 5'11-6'0 with a medium build, hazel eyes and brown/black hair. He learned his name from his arrest paperwork later in the incident. § 87(2)(b) and § 87(2)(b) exited the car, and complied with orders to get on the ground. § 87(2)(b) and § 87(2)(b) were not asked to exit.

An unmarked black Chevrolet Impala pulled up behind them and two plainclothes officers, identified by the investigation as PO Jason Ragoo and Sgt. Michael Elderbaum, exited the vehicle, and approached their car. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) described PO Ragoo as a plainclothes dark-skinned male in his 30s,

standing 5'8, chubby, with tattoos on his arms. § 87(2)(b) described Sgt. Elderbaum as a plainclothes white male in his 40s standing 5'11-6'0. The officers § 87(2)(b) did not specify who exactly) patted § 87(2)(b) down, and then called for a marked car to transport § 87(2)(b) and § 87(2)(b) to the 109<sup>th</sup> Precinct stationhouse. Officers, identified by the investigation as PO Gino O'Leary and PO Dimitrios Sotiriou of the 109<sup>th</sup> Precinct, arrived in a marked car and drove § 87(2)(b) and § 87(2)(b) to the stationhouse. § 87(2)(b) described PO O'Leary as a uniformed white male in his late 20s, standing 6'0, with a medium build and short blond hair. § 87(2)(b) described PO Sotiriou as a uniformed white male with brown hair.

When they arrived at the stationhouse, PO Roby searched § 87(2)(b)'s pockets and socks. PO Roby told § 87(2)(b) that they had seen him "buy something," thought he had narcotics on him, and that he was going to be strip-searched. § 87(2)(b) alleged that he was walked into the hallway directly outside the holding cell. Inside the cell were § 87(2)(b) and § 87(2)(b) along with § 87(2)(b) a homeless man that § 87(2)(b) knew from the neighborhood. The officers told § 87(2)(b) to take his pants off, and he complied; § 87(2)(b) believed that people in the holding cell could possibly see this. In his first interview § 87(2)(b) stated this search took place in a bathroom, but in his second statement he said it was the hallway in front of the holding cell.

Then, § 87(2)(b) alleged that PO O'Leary and PO Sotiriou conducted a strip search. The investigation has determined that it was PO Roby and Sgt. Elderbaum who conducted this strip search. § 87(2)(b) was still wearing his shirt, boxers, and socks. PO Roby pulled out the waistband of his boxer briefs and saw the heroin in there. PO Roby stuck his hand down § 87(2)(b)'s underwear and took out a bag of marijuana and ten bags of heroin; there were still two bags of heroin in his underwear, but at this point neither § 87(2)(b) nor PO Roby noticed this. In his initial interview § 87(2)(b) said that the heroin was outside his underwear held in place by the elastic waistband of his shorts, but in his second interview he said it was inside his underwear.

The officers returned § 87(2)(b) to the holding cell and began taking the other individuals out of the cell to question them. 15-20 minutes after his strip search, § 87(2)(b) realized that there were two bags of heroin remaining in his underwear. § 87(2)(b) was starting to feel the effects of withdrawal, so he took a bag out and snorted it. Before he did this, he felt nauseous and achy; after he took the heroin he felt "normal," and he explained because he is a drug addict he just feels his "usual self" on heroin. The officers took other people out to question them, and § 87(2)(b) believed that § 87(2)(b) told the officers what he had done, though he was not sure. PO Ragoo came back and told § 87(2)(b) to come with him. They walked to a room directly to the right of the holding cells, with 14-20 individual cells arranged in a circle.

PO Roby, Sgt. Michael Elderbaum, and a male officer § 87(2)(b) believed to be PO O'Leary were standing there waiting for him in the room. Upon entering the room, PO Ragoo placed § 87(2)(b) against the wall and said, "You think I'm stupid!" and punched him in the face with a closed fist, hitting him in the left eye. PO Roby stood on his left and Sgt. Elderbaum stood on his right, and they all punched § 87(2)(b) repeatedly in the face and ribs. § 87(2)(b) squatted down and held up his hands to defend himself. PO Roby, PO Ragoo, and Sgt. Elderbaum all attacked him, striking him more than ten times with their fists, and when § 87(2)(b) went down to the ground, the officers kicked him. The officer that § 87(2)(b) believed to be PO O'Leary did not take part in the force against § 87(2)(b). PO Ragoo put his knee on § 87(2)(b)'s back and the officers told him to put his hands behind his back, but § 87(2)(b) did not put his hands behind his back for fear of getting hit. § 87(2)(b) heard one of the officers mention that they were going to go get a taser and § 87(2)(b) became compliant because he did not want to get tased. § 87(2)(b) could not identify the officer who said this. An

unknown officer cuffed § 87(2)(b) (who § 87(2)(b) also could not identify), removed his pants, and PO Ragoo put on rubber gloves and used his thumb to search § 87(2)(b)'s anus. § 87(2)(b) estimated the fight lasted 15 minutes. The officers told him to stay calm, and § 87(2)(b) replied that he was calm, while shouting, "You stupid motherfuckers" and other profanity. § 87(2)(b) did not strike any of the officers and did not make threats to them at any point. § 87(2)(b) did not know where § 87(2)(b) or § 87(2)(b) were at this time and were not sure if they could witness this. The officers recovered the final bag of heroin from the ground.

Once they were done searching him, the officers put § 87(2)(b) into an individual cell and gave him his cell phone to allow him to make a phone call. § 87(2)(b) called his mother and asked her to bring him a sweater because he was going to be taken to the hospital. § 87(2)(b) cursed at the officers, saying "What the fuck, you didn't have to do this shit. If you had asked me I would have given it [the heroin] to you." PO Roby said that § 87(2)(b) should have said something to him about having the heroin, and that he made the officers "look stupid" by secreting it into the holding cell. The officers asked if he needed medical attention, and § 87(2)(b) said yes; an ambulance soon responded to the stationhouse for § 87(2)(b)'s injuries. § 87(2)(b) did not have any physical altercation with any civilians in the holding cell. PO Ragoo escorted § 87(2)(b) to the ambulance, and EMTs transported § 87(2)(b) to § 87(2)(b), where he was given an ice pack and a cat scan. The hospital staff could not open his eye because it might hurt it more; discharge was coming from his eye.

§ 87(2)(b) provided the name of witness § 87(2)(b) who was arrested for a different incident. § 87(2)(b) was in the holding cell and observed § 87(2)(b) being strip-searched. However, § 87(2)(b) stated that § 87(2)(b) is § 87(2)(b) and does not have a phone number. The drug dealer who sold § 87(2)(b) and § 87(2)(b) the heroin was not arrested.

**Witness: EMT § 87(2)(b)**

- § 87(2)(b) was § 87(2)(b) old on the incident date. He is a Hispanic male with brown hair and brown eyes.
- At the time of the incident, he was a FDNY EMT, shield #§ 87(2)(b) assigned to truck 46-A with EMT § 87(2)(b)

**Ambulance Call Report**

The ambulance call report (encl. in blue medical folder) filled out by EMT § 87(2)(b) indicates that at 11:15 p.m. on June 5, 2013, they were dispatched to the 109<sup>th</sup> Precinct stationhouse. At 11:35 p.m. they transported § 87(2)(b) to § 87(2)(b).

§ 87(2)(b) had pain and swelling in his left eye consequent to a fight or assault. An ice pack was applied to the injury. § 87(2)(b)'s vitals were otherwise normal and there was no gross deformation nor signs of any distress. § 87(2)(b) was diagnosed with swelling and contusions due to assault.

**CCRB Testimony**

On March 27, 2014, EMT § 87(2)(b) was interviewed at the CCRB (encl. 7a-c).

On the night of June 5, 2013, EMT § 87(2)(b) and his partner EMT § 87(2)(b) responded to a call for an injured male party at the 109<sup>th</sup> Precinct stationhouse. The desk sergeant directed them to the holding cell, where they observed § 87(2)(b) in handcuffs. EMT § 87(2)(b) observed that § 87(2)(b) had a contusion to his left eye, and it looked like it was swollen shut. § 87(2)(b) stated that he had been assaulted by police while being arrested, but did not go into

further detail about how this occurred. § 87(2)(b) was compliant with EMS and they had no issue with him. EMT § 87(2)(b) did not see any use of force by the police.

**Witness:** § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old on the incident date. He is a Hispanic male who stands at 6'4 and weighs 180 pounds with black hair and brown eyes.

**CCRB Testimony**

On January 13, 2014, § 87(2)(b) was interviewed at the Otis Bantum Correctional Center on Rikers Island (encl. 8a-d).

On the evening of June 5, 2013, § 87(2)(b) was arrested by members of Narcotics Borough Queens North. When he arrived at the 109<sup>th</sup> Precinct holding cells he saw several people he knew from College Point, including his friend § 87(2)(b) and acquaintances § 87(2)(b) and § 87(2)(b). From speaking with them, § 87(2)(b) gathered that they had been arrested for a drug-related offense, although § 87(2)(b) did not know what specifically.

Plainclothes officers began entering the cell and taking out the prisoners to question them. § 87(2)(b) was the first to be asked outside, and led around a corner from the holding cell near the individual cells. Several “narcotics officers” asked him who sold drugs in the neighborhood, and questioned him for about five minutes, but because § 87(2)(b) did not want to cooperate, they put him back in the holding cell. Then the officers called § 87(2)(b) and took him outside to question him. A few minutes later, the narcotics officers returned § 87(2)(b) back to the cell. An officer that § 87(2)(b) described as a plainclothes black male in his 30s named “Officer Debo” looked at § 87(2)(b) and said, “You fucking lied to us,” and grabbed § 87(2)(b) to take him out of the cell. § 87(2)(b) said that Officer Debo is a well-known narcotics officer in the neighborhood but he believed that to be a nickname. The officers took him to the individual cells five to ten feet away, out of the line of sight of the people in the holding cell.

§ 87(2)(b) could hear the sound of a commotion, and then § 87(2)(b) crying out for help and the sound of a physical altercation. After ten minutes, § 87(2)(b) arresting officers took § 87(2)(b) out of the holding cell to go to Central Booking while “Officer Debo” and a plainclothes white male with blond spiky hair brought § 87(2)(b) back into the holding cell, with injuries all over his face. He had bruises across his face, and his right eye was badly injured as if the eye was coming from the socket. “Officer Debo” laughed and said “Keep crying, we’ll do this shit again,” and “How did you like my knee in your face.” § 87(2)(b) was crying and complained that they had “fucked him up.” § 87(2)(b) had not seen any injuries on § 87(2)(b) before was taken by officers for from questioning.

About eight hours later in Central Booking, § 87(2)(b) and § 87(2)(b) encountered each other again as their cells were close in proximity. § 87(2)(b) said he was beaten, kneed in the face, and stripped down; § 87(2)(b) believed that § 87(2)(b) had a bag of heroin on him, and § 87(2)(b) said he got it from § 87(2)(b). § 87(2)(b) did not see § 87(2)(b) using drugs in the holding cell.

**Complainant:** § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old on the incident date. She is § 87(2)(b)'s mother.

**CCRB Testimony**

On July 3, 2013, § 87(2)(b) was interviewed at the CCRB (encl. 9a-e). She also emailed the investigation photographs she took of § 87(2)(b)'s injuries on that same date (encl. 6j-p).

At 11:15 p.m. on June 5, 2013, § 87(2)(b) received a phone call from § 87(2)(b) informing her that he had been arrested and asking if she could bring him a sweater at the 109<sup>th</sup> Precinct stationhouse. § 87(2)(b) also said he had just been beaten up by the police, and was going to the hospital. § 87(2)(b) drove to the 109<sup>th</sup> Precinct stationhouse and saw an ambulance parked out front, and saw § 87(2)(b) inside the ambulance with his face wrapped in bandages. He was accompanied by individuals identified by the investigation as EMT § 87(2)(b) and PO Jason Ragoo. PO Brian Roby and another officer identified by the investigation as Sgt. Michael Elderbaum were standing outside the ambulance looking inside.

§ 87(2)(b) and PO Roby both went inside the stationhouse to check-in the sweater. § 87(2)(b) asked PO Roby for his name and shield number, and PO Roby wrote down his name and command on a piece of paper and handed it to her. § 87(2)(b) asked PO Roby if being the arresting officer gave him the privilege to do what he did to her son. PO Roby told § 87(2)(b) that he had felt threatened. When § 87(2)(b) got home he told her that there were other officers involved, including a sergeant.

#### **Attempts to locate and contact witnesses**

BADS records indicate that three other men were arrested alongside § 87(2)(b) and § 87(2)(b).

Between November 15, 2013, and December 6, 2013, five phone calls were made and two letters sent to § 87(2)(b). On one of the calls, § 87(2)(b)'s girlfriend Ashley answered and said that § 87(2)(b) was thinking about returning the calls, but she would talk to him. § 87(2)(b) did not make contact with the investigation.

A phone call was made to § 87(2)(b)'s phone number on November 15, 2013, but it was not in service. Letters were sent to his address on November 15, 2013, and November 25, 2013. On December 2, 2013, § 87(2)(b)'s mother Amy Sullivan called the investigator and said that § 87(2)(b) did not want to cooperate because he was scared of the police. § 87(2)(b) did not ever make contact with the investigation.

Between November 15, 2013, and December 4, 2013, five phone calls were made and two letters sent to § 87(2)(b). § 87(2)(b) did not respond to any phone calls or letters, and has not made contact with the investigation. Neither letter was returned by the postal service.

EMT § 87(2)(b) was scheduled to appear at the CCRB for an interview on March 28, 2014, but on that date he called and said his supervisor had not informed him of his scheduled appearance until that very day. As EMT § 87(2)(b) filled out the ACR it would be unlikely that EMT § 87(2)(b)'s testimony would be substantially different from his partner's, EMT § 87(2)(b) was not interviewed.

On April 14, 2014, § 87(2)(b)'s 50H hearing transcript was received from Renfro, Driscoll & Foster LLP, § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(g)

#### **NYPD Statements:**

**Subject Officer: PO BRIAN ROBY**

- *PO Brian Roby was § 87(2)(b) old on the incident date. He is a white male who stands 5'10 and weighs 180 pounds with brown hair and brown eyes.*
- *PO Roby worked from 3:00 p.m. to 6:05a.m. from June 5 to June 6, 2013. He was assigned to assist Intel Sergeant Elderbaum and was in plainclothes in an unmarked car working also with PO Jason Ragoo.*

**Criminal Court Complaint**

In § 87(2)(b)'s criminal court complaint (encl. 10b-d), PO Roby swore under oath that at about 5:55 p.m. at the southwest intersection of 124<sup>th</sup> Street and 15<sup>th</sup> Avenue in Queens, he observed § 87(2)(b) giving § 87(2)(b) four glassines of heroin, and § 87(2)(b) handed § 87(2)(b) a sum of U.S. currency in exchange. A short while later, PO Roby observed that § 87(2)(b) pulled up in a car a short distance away, and § 87(2)(b) entered the rear driver's side and sold § 87(2)(b) two ziplock bags of marijuana for U.S. currency. When PO Roby approached, § 87(2)(b) had a glassine of heroin in his hand, and a ziplock bag of marijuana and ten glassines of heroin in his waistband. § 87(2)(b) was transported back to the 109<sup>th</sup> Precinct stationhouse, where he yelled and screamed and pushed PO Roby, causing public inconvenience. PO Roby recovered two further glassines of heroin from § 87(2)(b)'s underwear.

**Arrest reports**

Arrests § 87(2)(b) and § 87(2)(b) at 6:18 p.m. on June 5, 2013 (encl. 10f-k), indicate that on the southwest corner of 124<sup>th</sup> Street and 15<sup>th</sup> Avenue in College Point, § 87(2)(b) was observed exchanging a controlled substance for U.S. currency from an apprehended other § 87(2)(b). § 87(2)(b) was charged with one count of criminal sale of a controlled substance. § 87(2)(b) was then observed in that same location exchanging a quantity of marijuana for U.S. currency from an apprehended other § 87(2)(b) and upon being stopped and searched incident to lawful arrest § 87(2)(b) was found to be in possession of a controlled substance in plain view. § 87(2)(b) was charged with § 87(2)(a) 160.50 § 87(2)(b)s. The controlled substance was heroin (opium derivative) stamped "Law & Order Criminal Intent." The arrest report indicates no force was used.

Arrests § 87(2)(b) and § 87(2)(b) at 6:18 p.m. on June 5, 2013 (encl. 10o-t), indicate that on the southwest corner of 124<sup>th</sup> Street and 15<sup>th</sup> Avenue in College Point, § 87(2)(b) and § 87(2)(b) were found to be in possession of heroin stamped "Law & Order Criminal Intent. The arrest reports indicate that § 87(2)(b) and § 87(2)(b) were under the influence of heroin. They were charged with § 87(2)(a) 160.50 § 87(2)(b).

Arrest § 87(2)(b) at 6:18 p.m. on June 5, 2013 (encl. 10u-w), indicates that on the southwest corner of 124<sup>th</sup> Street and 15<sup>th</sup> Avenue in College Point, § 87(2)(b) was observed in possession of marijuana in plain view in public. The arrest report indicates that § 87(2)(b) was under the influence of heroin. He was charged with § 87(2)(a) 160.50 § 87(2)(b).

Arrest § 87(2)(b) at 8:05 p.m. on June 5, 2013 (encl. 10l-n) indicates that inside the 109<sup>th</sup> Precinct stationhouse, § 87(2)(b) attempted to conceal a quantity of heroin on his person, and attempted to strike officers to prevent them from recovering the heroin. § 87(2)(b) stated,



“Fuck you, I don’t have shit.” § 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50 criminal possession of a controlled substance, § 87(2)(b), § 87(2)(a) 160.50. The arrest report indicates no force was used.

### **Memo book**

At 6:18 p.m. PO Roby indicated “four under” at 124<sup>th</sup> Street and 15<sup>th</sup> Avenue in College Point for § 87(2)(b), § 87(2)(a) 160.50. Between 7:30 p.m. and 10:15 p.m. § 87(2)(b) and § 87(2)(b) were processed at the 109<sup>th</sup> Precinct stationhouse. § 87(2)(b) was transported to § 87(2)(b) at 12:05 a.m. and returned at 2:00 a.m. (encl. 10x-z)

### **CCRB Testimony**

On April 11, 2014, PO Brian Roby was interviewed at the CCRB (encl. 10aa-ac).

On June 5, 2013, PO Roby was scheduled to assist Sgt. Michael Elderbaum, the field intelligence officer. PO Roby described this assignment as gathering intelligence on narcotics and firearms activity within a given precinct. Around 6:00 p.m. PO Roby was driving in an unmarked black Nissan Altima with Sgt. Elderbaum and PO Jason Ragoo in the vicinity of 15<sup>th</sup> Avenue between 123<sup>rd</sup> and 124<sup>th</sup> Streets when they observed § 87(2)(b) and § 87(2)(b) two individuals who PO Roby recognized from prior drug-related arrests. Near the corner of 15<sup>th</sup> Avenue and 124<sup>th</sup> Street a man that PO Roby recognized as § 87(2)(b) from prior drug arrests approached the two individuals. It was well-lit outside, as it was summertime.

From within the car and from a distance of approximately fifty feet, PO Roby observed § 87(2)(b) speak to § 87(2)(b) and § 87(2)(b). Both § 87(2)(b) and § 87(2)(b) gave U.S. currency to § 87(2)(b) and in exchange § 87(2)(b) gave § 87(2)(b) small glassine envelopes consistent in appearance with the commonly-practiced method of packaging heroin for sale. PO Roby did not describe where § 87(2)(b) retrieved these items from. After this transaction, § 87(2)(b) and § 87(2)(b) walked westbound toward College Point Boulevard (and also towards PO Roby and the other officers) while § 87(2)(b) walked southbound on 124<sup>th</sup> Street and out of the line of sight. PO Roby and PO Ragoo exited the vehicle and stopped § 87(2)(b) and § 87(2)(b) while Sgt. Elderbaum followed § 87(2)(b) on foot. PO Roby and PO Ragoo handcuffed § 87(2)(b) and § 87(2)(b) and then PO Roby walked toward 124<sup>th</sup> Street to follow § 87(2)(b). He did not observe PO Ragoo search § 87(2)(b) or § 87(2)(b).

PO Roby observed § 87(2)(b) walk southbound on 124<sup>th</sup> Street, cross over the street, and approach a parked Ford SUV facing northbound. The windows of the vehicle were down, and § 87(2)(b) greeted the driver of the vehicle, identified as § 87(2)(b) before getting into the rear driver’s side seat. There were two other individuals in the vehicle. Sgt. Elderbaum was observing the passenger’s side of the vehicle, and PO Roby was observing from the driver’s side from a distance of 75 feet, and from an angle that gave him a good view into the car. § 87(2)(b) gave § 87(2)(b) a quantity of U.S. currency, and § 87(2)(b) in exchange gave him an item that clearly appeared to be a ziplock bag of marijuana. PO Roby did not see where he had retrieved the marijuana from.

PO Roby approached the Ford SUV from the driver’s side, while Sgt. Elderbaum approached from the passenger’s side. With one hand PO Roby drew his firearm and held it in front of him pointed at the ground, and with his other hand he raised up his shield which was around his neck and said, “Police. Put your hands up.” The four occupants of the car complied with this order, and touched their hands to the ceiling. PO Roby did not point his firearm at any of

the occupants. PO Roby explained that he drew his firearm for officer safety as vehicle stops are dangerous, and he was outnumbered by the amount of occupants in the vehicle. PO Roby ordered § 87(2)(b) to exit the vehicle, and he did so, while holding in his hands what appeared to be a glassine of heroin. Once § 87(2)(b) exited the vehicle, PO Roby holstered his firearm. PO Roby gave § 87(2)(b) a quick frisk, and then placed handcuffs on him; the glassine of heroin fell to the ground. PO Roby searched § 87(2)(b) incident to arrest, and discovered ten more glassines of heroin in his waistband outside his underwear. As § 87(2)(b) had a ziplock bag of marijuana in plain view, he was asked to exit the vehicle and was also placed under arrest. The two other occupants of the vehicle were not arrested. § 87(2)(b)'s demeanor at this point was quiet, calm, and cooperative.

A marked car was called to the scene to transport the defendants back to the stationhouse, driven by officers identified by the investigation as PO O'Leary and PO Sotiriou.

At the 109<sup>th</sup> Precinct stationhouse, all four defendants were searched again at the front desk, but no new contraband was found. As Sgt. Elderbaum believed that § 87(2)(b) was concealing other contraband that was not found, he and PO Roby walked § 87(2)(b) to an anteroom near the holding cell where PO Roby conducted a strip search. Sgt. Elderbaum's suspicion that he was concealing heroin was due to the multiple bags of heroin found tucked in § 87(2)(b)'s waistband upon the search incident to arrest. § 87(2)(b) was ordered to remove his clothing, and he did so with no complaint or resistance; no new contraband was found. Sgt. Elderbaum supervised this strip search. The four defendants were lodged into the holding cell, and PO Roby began to do the paperwork.

Ten to fifteen minutes after the defendants entered the precinct stationhouse (around 7:00 p.m.), Sgt. Elderbaum approached PO Roby and said, "§ 87(2)(b) is fidgeting inside his pants." He believed that § 87(2)(b) was concealing further contraband on him that was not discovered during the strip search, and ordered PO Roby to perform another strip search. PO Roby did not recall any discussion of § 87(2)(b) using heroin in the holding cell. PO Roby walked into the holding cell and told § 87(2)(b) he needs to come with them, because he has to get strip searched again. § 87(2)(b) became aggressive and raised his voice, and shouted, "I don't have fucking shit." PO Roby handcuffed § 87(2)(b) and took him to a private cell; no one was present in this cell except PO Roby and § 87(2)(b). § 87(2)(b) faced the wall and PO Roby removed the cuff from one of his hands; § 87(2)(b) placed this free hand on the wall. As PO Roby removed the other cuff, § 87(2)(b) used his arm to push off the wall, backing into PO Roby. § 87(2)(b) swung his body around and threw a punch at PO Roby's torso; the punch did not land. PO Roby grabbed him by the arms and attempted to force him to the ground. Hearing the commotion, Sgt. Elderbaum entered the room and they struggled together. PO Roby took § 87(2)(b) to the ground face-first, and attempted to pull his arms behind his back. PO Roby could not recall if § 87(2)(b)'s head hit the floor.

The struggle was violent and prolonged, as § 87(2)(b) is 6'2 and 220 pounds. § 87(2)(b) kept attempting to stand up, and also kept trying to reach into his crotch. After § 87(2)(b) was successfully handcuffed, they rolled him face-up and Sgt. Elderbaum and PO Roby conducted a strip search. PO Roby recovered two glassines of heroin from the bottom of § 87(2)(b)'s underwear. PO Roby did not strike or punch § 87(2)(b) or slam his face on the floor, and had no contact with his face; PO Roby was primarily grabbing § 87(2)(b)'s wrists to get his arms under control, as he was trying to swing at the officers. PO Roby did not see if Sgt. Elderbaum punched or struck § 87(2)(b). PO Roby did not see if § 87(2)(b)'s face was injured.

§ 87(2)(b) was taken back into the holding cell. PO Roby did not see any injury on § 87(2)(b) at this point, nor did § 87(2)(b) complain of injury. Around 11:00 p.m. the other defendants were about to be taken to Queens Central Booking. Upon hearing this, § 87(2)(b)

requested to go to the hospital; PO Roby believed that he wanted to avoid going to Central Booking. In the four hours between the strip search and his request for medical treatment, § 87(2)(b) made no statements about having any injuries. When § 87(2)(b) was taken out to be treated by EMS, PO Roby saw swelling around § 87(2)(b)'s eye; when shown § 87(2)(b)'s booking photo (encl. 10e), he stated that the bruise appears worse in the photo than when he observed § 87(2)(b) in person.

As § 87(2)(b) was being placed in the ambulance, § 87(2)(b) arrived at the stationhouse to provide her son with a sweater or hoodie. § 87(2)(b) asked what happened to her son and for PO Roby's name and shield, which he wrote down on a piece of paper and gave to her. After receiving this paper, she "stormed out" of the stationhouse. PO Roby did not believe he saw § 87(2)(b) again.

#### **Subject Officer: PO JASON RAGOO**

- *PO Jason Ragoo was § 87(2)(b) old on the incident date. He is an Asian male who stands at 5'7 and weighs 185 pounds with black hair and brown eyes.*
- *PO Ragoo worked from 11:30 a.m. to 12:05 a.m. from June 5 to June 6, 2013. He was assigned to assist Intel Sergeant Elderbaum and was in plainclothes in an unmarked car working also with PO Brian Roby.*

#### **Arrest reports**

Arrest § 87(2)(b) (encl. 11e-g) indicates that on June 4, 2013, the day before this incident, PO Ragoo arrested § 87(2)(b) for § 87(2)(a) 160.50  
§ 87(2)(b)

#### **Medical treatment of prisoner form**

A medical treatment of prisoner form prepared by PO Ragoo (encl. 11b) indicates that "while in police custody defendant did attempt to strike the arresting officer when arresting officer did attempt to recover evidence on the defendant's person. Defendant did continue to attempt to strike arresting officer while arresting officer attempted to restrain the defendant. Defendant has a contusion to his left eye." At 11:37 p.m. § 87(2)(b) was transported to § 87(2)(b) § 87(2)(b). § 87(2)(b) was not admitted to the hospital.

#### **Memo book**

At 6:18 p.m. PO Ragoo indicated "four under" at 124<sup>th</sup> Street and 15<sup>th</sup> Avenue in College point by PO Roby (encl. 11c-d).

#### **CCRB testimony**

On January 9, 2013, PO Jason Ragoo was interviewed at the CCRB (encl. 11h-j).

§ 87(2)(g)

§ 87(2)(b) Shortly before 6:00 p.m. on June 5, 2013, PO Ragoo was assisting the field intelligence officer Sgt. Elderbaum in an unmarked black Nissan Altima with PO Brian Roby. PO Ragoo said the Intel team is responsible for knowing who the major drug dealers in a precinct are. In the vicinity of 15<sup>th</sup> Avenue and 124<sup>th</sup> Street PO Ragoo observed two individuals he knew to be heroin addicts. One of them was § 87(2)(b) who PO Ragoo had arrested for possessing heroin the previous day, and the other was § 87(2)(b) who PO Ragoo had arrested on some prior date. The officers observed them for five to ten minutes as they walked on 15<sup>th</sup> Avenue; PO Ragoo said they seemed to be "in drug mode" searching for narcotics.

§ 87(2)(b) and § 87(2)(b) acknowledged another man on the middle of the block, and either Sgt. Elderbaum or PO Roby said "Look, it's § 87(2)(b) Sgt. Elderbaum and PO Roby

identified this third man as § 87(2)(b) who they stated was a heroin dealer. PO Ragoo had never seen § 87(2)(b) in person before, but recognized him from photographs in the precinct stationhouse and recognized his name from hearing it before. Sgt. Elderbaum and PO Roby had both interacted with § 87(2)(b) before, and knew him to be a heroin dealer from prior arrests. They observed § 87(2)(b) and § 87(2)(b) have a brief conversation from a distance of 30-40 feet; as they were in a Nissan and not an Impala it was easier to sneak up on people.

§ 87(2)(b) took out some U.S. currency and gave it to § 87(2)(b) who took out his own money, combined it with § 87(2)(b)'s, and gave it to § 87(2)(b). In exchange, § 87(2)(b) placed an item in § 87(2)(b)'s hand in a way simulating a handshake. PO Ragoo described this as a hand-to-hand exchange indicating a drug transaction, because § 87(2)(b) looked down and appeared to be counting items out in his hand. § 87(2)(b) and § 87(2)(b) walked away from § 87(2)(b) and they went their separate ways. Sgt. Elderbaum said he would follow § 87(2)(b) on foot, and instructed PO Roby and PO Ragoo to apprehend the two purchasers. They did not have a "battle plan" other than this due to the variation of the situation; if all three men had stayed together, they would have arrested them all together. Sgt. Elderbaum exited the car and followed § 87(2)(b) down a different block out of sight, while PO Roby drove the car and followed § 87(2)(b) and § 87(2)(b).

PO Roby stopped the car, and both he and PO Ragoo exited and approached § 87(2)(b) and § 87(2)(b). Upon seeing the officers approach, § 87(2)(b) quickly tried to stick the item in his hand inside his right pants pocket. PO Roby and PO Ragoo handcuffed both men and placed them under arrest, and PO Roby told PO Ragoo to wait while he took the car and met up with Sgt. Elderbaum. PO Roby got back in the car and drove in the direction that Sgt. Elderbaum had walked. While he did so, PO Ragoo searched both men incident to arrest. In § 87(2)(b)'s right pants pocket was a quantity of heroin packaged in wax paper envelopes. PO Ragoo did not recall how many envelopes there were. Sgt. Elderbaum, PO Roby, and § 87(2)(b) were all on another block and out of his line of sight.

PO Gino O'Leary and PO Dimitrios Sotiriou responded to transport the prisoners. The officers took § 87(2)(b) and PO Ragoo around the corner to meet up with PO Roby and Sgt. Elderbaum. PO Ragoo then observed that § 87(2)(b) and another man, § 87(2)(b) were in handcuffs arrested next to a vehicle. Some unapprehended other persons were in the vehicle. PO Ragoo did not observe PO Roby or any other officer draw a firearm. PO Ragoo did not observe a search of § 87(2)(b) on the scene.

The prisoners were transported back to the 109<sup>th</sup> Precinct stationhouse. Before being put in the cells, PO Ragoo and PO Roby searched the four persons, but PO Ragoo did not know which of them searched which prisoner. No new contraband was found during the search in the stationhouse. PO Ragoo did not observe anyone be strip searched before being placed in the holding cell. All four defendants were placed in the same holding cell. A short time later, Sgt. Elderbaum was watching the cameras in the cells. PO Ragoo overheard Sgt. Elderbaum inform PO Roby, "This guy is fiddling around with the front of his pants" and said that § 87(2)(b) kept sticking his hand down his crotch, and he believed he was concealing contraband. Sgt. Elderbaum said he was going to put it in the log and authorize a strip search.

Sgt. Elderbaum and PO Roby entered the holding cell, explained the need for a search, handcuffed § 87(2)(b) and took him to the female holding cells in another room. PO Ragoo did not take part in this, and did not observe the strip search. Shortly after, PO Ragoo heard a commotion and heard both Sgt. Elderbaum and PO Roby order § 87(2)(b) to stop resisting. PO Ragoo went to the holding cells and opened the door and saw that § 87(2)(b) was on the ground in handcuffs kicking and screaming, with his shirt off. Sgt. Elderbaum said that they had recovered more heroin from his groin area, packaged in the same wax paper packets that PO

Ragoo had found on § 87(2)(b) had become combative, and Sgt. Elderbaum and PO Roby had subdued him and placed him back in handcuffs. No other officers took part in the altercation, but other officers poked their heads in and saw the situation was under control. § 87(2)(b) was yelling and screaming, “Fuck you, make me” in response to the officers’ orders to stop resisting and put his hands behind his back. PO Ragoo did not see any officer strike § 87(2)(b) with a fist or kick him. There was no discussion of the possibility that § 87(2)(b) had used heroin in the holding cell.

PO Ragoo said that § 87(2)(b) was not visibly injured. PO Ragoo was shown § 87(2)(b)’s arrest photo depicting § 87(2)(b) with a swollen face and a black eye, and he stated that is not what he looked like after the strip-search. PO Ragoo said that photograph was taken after the hospital, and suggested his injuries looked worse then. PO Ragoo was shown the photographs of § 87(2)(b)’s injuries provided by § 87(2)(b) depicting a laceration on § 87(2)(b)’s arm, bruising on his face and behind his ears, and the black eye. PO Ragoo likewise did not recognize these injuries, and stated they were not consistent with what he saw after the strip search.

Around midnight, PO Ragoo told § 87(2)(b) that he would be transported to Queens Central Booking. § 87(2)(b) replied “Whatever, I don’t feel good. I don’t feel like doing this. I want to go to the hospital.” This was his first complaint, and he did not specify a particular injury, but said he was not feeling well. PO Ragoo called the ambulance, and a non-FDNY ambulance transported § 87(2)(b) to § 87(2)(b) and PO Ragoo rode in the ambulance.

**Subject Officer: SGT. MICHAEL ELDERBAUM**

- *Sgt. Michael Elderbaum was § 87(2)(b) old on the incident date. He is a white male who stands at 5’10 and weighs 200 pounds with brown hair and brown eyes.*
- *Sgt. Elderbaum worked from 10:00 a.m. to 10:35 p.m. on the incident date. He was Field Intelligence Officer and was in plainclothes in an unmarked car working with PO Brian Roby and PO Jason Ragoo.*

**Memo book**

Sgt. Elderbaum did not have any memo book entries regarding this incident (encl. 12b-c).

**CCRB testimony**

On January 7, 2014, Sgt. Michael Elderbaum was interviewed at the CCRB (enc. 12d-e).

§ 87(2)(g)  
As the field intelligence officer Sgt. Elderbaum testified that he has seen § 87(2)(b) around his precinct a lot, and has arrested him previously, and § 87(2)(b) is known to him as a narcotics dealer. Sgt. Elderbaum also recognized a picture of § 87(2)(b) shown to him, and indicated he was “the heroin dealer.” Sgt. Elderbaum’s descriptions of the hand to hand transactions between § 87(2)(b) and § 87(2)(b) and § 87(2)(b) and § 87(2)(b) were also consistent with the testimony of his partners. Sgt. Elderbaum did not draw his gun, and did not recall if PO Roby drew his gun. Sgt. Elderbaum’s descriptions of the apprehensions and demeanors of the defendants was also consistent with the testimony of PO Roby. Sgt. Elderbaum could not recall specific details about what narcotics were in plain sight, or if any narcotics were recovered at this point of the incident.

At the stationhouse, Sgt. Elderbaum did not recall who searched the defendants, and did not recall if any narcotics were recovered at this time. After they were logged into the holding cell, Sgt. Elderbaum sat at the front desk making entries in the command log. While he did so, he looked into a monitor that showed the feed from the video camera facing the holding cell. § 87(2)(g)

§ 87(2)(b) was “fidgeting” and playing with the front of his pants, and Sgt. Elderbaum believed he was hiding other contraband. Sgt. Elderbaum and PO Roby went down into the holding cell and told § 87(2)(b) to step forward for an additional search.

§ 87(2)(b) was handcuffed and led out of the main holding cell down to a more private holding cell by Sgt. Elderbaum and PO Roby. As this point, he had been compliant throughout this entire incident. Sgt. Elderbaum asked § 87(2)(b) if he had any other contraband on him that he wanted to declare; § 87(2)(b) denied this. The officers removed § 87(2)(b)'s handcuffs, and as soon as they did this § 87(2)(b) became combative. He punched Sgt. Elderbaum and PO Roby in the chest and arms and attempted to strike them further. Both officers grabbed him by the arms and pushed him down to the ground onto his knees. Other officers ran into the room after hearing the commotion, but Sgt. Elderbaum did not know who. § 87(2)(b) tried to put his hand in his waistband, but PO Roby and Sgt. Elderbaum seized his arms and put them into handcuffs. Sgt. Elderbaum instructed § 87(2)(b) to stop resisting but he did not comply; he did not punch him in the face or strike him in any way, nor did he observe any other officer do this. After § 87(2)(b) was subdued the strip search was continued and two paper packets of heroin were found in his underwear.

Sgt. Elderbaum was shown a photograph of the bruising around § 87(2)(b)'s eye and the contusions to his face; he did not recall seeing it before the arrest, and did not know how these bruises were sustained. He did not believe that § 87(2)(b) was injured during the altercation with the strip search, and § 87(2)(b) did not complain about injuries. § 87(2)(b) did not request medical treatment, and Sgt. Elderbaum did not recall if he was taken to the hospital. Sgt. Elderbaum believed that only one strip search was conducted.

**Witness Officers: PO DIMITRIOS SOTIRIOU and PO GINO O’LEARY**

- *PO Dimitrios Sotiriou was § 87(2)(b) old on the incident date. He is a white male who stands at 6’4 and weighs 235 pounds with black hair and brown eyes.*
- *PO O’Leary was § 87(2)(b) old on the incident date. He is a white male who stands at 6’3 and weighs 215 pounds with brown hair and blue eyes.*
- § 87(2)(g)

**Memo book**

At 5:50 p.m. there was a 10-85 called by the Intel Sergeant, and PO Sotiriou and PO O’Leary responded to 124<sup>th</sup> Street and 14<sup>th</sup> Avenue. At 6:05 p.m. they arrived, and at 6:18 p.m. they transported two males to the 109<sup>th</sup> Precinct stationhouse, where they arrived at 6:25 p.m. At 6:45 p.m. they resumed patrol and left the stationhouse (encl. 13b-e and 14b-e).

**CCRB testimony**

On March 28, 2014, PO Dimitrios Sotiriou and PO Gino O’Leary were interviewed at the CCRB (encl. 13f-g and 14f-g).

At 5:50 p.m. a 10-85 (or call for assistance) came over the radio from Intel Sgt. Michael Elderbaum requesting a cage car come to 124<sup>th</sup> Street and 15<sup>th</sup> Avenue to help transport prisoners. Upon arriving, they observed four arrested persons and three officers guarding them, Sgt. Elderbaum, PO Roby, and an officer identified by the investigation as PO Ragoo. Neither PO Sotiriou nor PO O’Leary saw any officer with his gun drawn. They did not know what the defendants had been arrested for, but Sgt. Elderbaum asked him to transport two of the men back to the stationhouse.

PO Sotiriou was shown a photograph of § 87(2)(b) and he identified him as one of the men he transported to the 109<sup>th</sup> Precinct stationhouse. He could not remember the other individual

in the car but described him as a white male (the investigation determined that this other defendant was § 87(2)(b)). At the stationhouse, PO Sotiriou and PO O’Leary logged in their defendants and searched them in front of the desk officer. PO Sotiriou and PO O’Leary both denied that they strip searched § 87(2)(b) and also repeated that no narcotics or contraband was found. PO Sotiriou and PO O’Leary did not overhear any discussion of § 87(2)(b) having heroin on his person, or that he should be strip searched.

Neither officer observed any force used against § 87(2)(b) nor did they have any interaction with him after this incident. PO Sotiriou and PO O’Leary were shown a photograph of § 87(2)(b)’s mugshot depicting the contusion to his face, and they did not recognize these injuries.

**Witness Officer: SGT. MICHELLE KEMP**

- *Sgt. Michelle Kemp was § 87(2)(b) old on the incident date. She is a black female who stands at 5’5 and weighs 165 pounds with black hair and brown eyes.*
- *Sgt. Kemp worked from 2:50 p.m. to 11:47 p.m. on the incident date. She was in uniform and assigned to be desk sergeant, and was working alone.*

**Memo book**

Because Sgt. Kemp was assigned to the stationhouse desk, she did not keep a memo book and wrote entries directly into the command log (encl. 18a-h).

**CCRB testimony**

On March 4, 2014, Sgt. Michelle Kemp was interviewed at the CCRB (encl. 15b-c).

On June 5, 2013, Sgt. Kemp was desk sergeant at the 109<sup>th</sup> Precinct Stationhouse. At 6:30 p.m. that day, Sgt. Michael Elderbaum, PO Brian Roby, and PO Jason Ragoo brought in four defendants, identified by the command log as § 87(2)(b) and § 87(2)(b). Sgt. Elderbaum informed Sgt. Kemp that they were arrested for heroin possession and sale. Sgt. Kemp observed the officers search the four men thoroughly before the desk, by searching their pants and jacket pockets, the legs of their pants, and their hats. PO Roby was the officer who searched § 87(2)(b). Sgt. Kemp recognized a photograph of § 87(2)(b) as one of the defendants. She had never seen or interacted with § 87(2)(b) before this incident, and had no conversation with him during the incident.

From the moment he entered the stationhouse § 87(2)(b) was loud and belligerent, and used profanity toward the officers, and was uncooperative with police instructions. § 87(2)(b) refused to stand still in front of the desk, and turned around and fidgeted while being searched. After the defendants were searched and their pedigree information logged, they were placed in the holding cell. No defendants were strip-searched at this point. § 87(2)(b) was the only defendant who was being disruptive and obscene. He shouted at the officers, “Fuck the police. Y’all ain’t shit. I’m coming back to get y’all, all of you.” § 87(2)(b) was shouting so loudly that Sgt. Kemp could hear it from the front desk.

Sgt. Elderbaum and Sgt. Kemp sat together at the desk. Fifteen minutes after the defendants were logged in, Sgt. Elderbaum looked at the surveillance camera and said that § 87(2)(b) had his hands down his underwear. Sgt. Kemp did not observe this herself, as Sgt. Elderbaum’s body was blocking the monitor. Sgt. Elderbaum, PO Roby, and PO Ragoo went to the holding cell to investigate what § 87(2)(b) was doing. Shortly after, Sgt. Elderbaum returned to the desk and told Sgt. Kemp they strip searched § 87(2)(b) and found heroin in his underwear; they had to restrain him because he was uncooperative with the search. Sgt. Kemp did not observe any part of the strip search, or any force used against § 87(2)(b) and she had not heard any sounds of a struggle.

Over four hours later, Sgt. Elderbaum informed Sgt. Kemp that § 87(2)(b) complained that the police used force against him, and requested to go to the hospital. Sgt. Elderbaum did not specify what type of force § 87(2)(b) was complaining about, or what injuries he may have had. At 11:30 p.m. an ambulance arrived to transport § 87(2)(b) to Booth Hospital. Sgt. Kemp saw § 87(2)(b) being removed on a stretcher, but did not speak to him, hear him complain of injuries, nor did she observe injuries on him. Sgt. Kemp was shown a photograph of § 87(2)(b)'s mugshot which depicts a black eye and other injuries, and she did not know how they were sustained or observe them at the time of incident. Sgt. Kemp's tour ended at 11:47 p.m., shortly after § 87(2)(b) was transported by EMS. To her knowledge, no other officers except Sgt. Elderbaum, PO Roby, and PO Ragoo had any interaction with § 87(2)(b).

#### **Medical records from § 87(2)(b)**

Medical records (encl. in blue medical folder) indicate that § 87(2)(b) was admitted on June 5, 2013, at 11:47 p.m. for an injury to the face and neck and was diagnosed with a contusion of the scalp and neck due to an "unarmed fight/brawl." The records note that § 87(2)(b) was combative and assaulted by the police in an attempt to take him down, and was punched in the face. He was given Motrin and discharged at 1:36 a.m.

#### **NYPD Documents**

##### **Property vouchers**

At 7:36 p.m. on June 5, 2013, PO Roby vouchered ten bags of alleged heroin packaged in glassines and a clear plastic zip of alleged marijuana from § 87(2)(b)'s first two arrests. He also vouchered \$164 in small bills (encl. 16a-h, k-l).

At 1:41 a.m. on June 6, 2013, PO Roby vouchered two bags of alleged heroin packaged in glassines from § 87(2)(b)'s third arrest, stating that "§ 87(2)(a) 160.50" (encl. 16i-j).

##### **Command log**

The 109<sup>th</sup> Precinct command log (encl. 18a-h) indicates that at 6:30 p.m. four arrests were logged in – § 87(2)(b) and § 87(2)(b). A strip search was authorized by Sgt. Elderbaum for § 87(2)(b) though the time of the strip search is not noted and there is neither documentation of multiple strip searches nor the results of the strip search(es). § 87(2)(b) was transported to § 87(2)(b) by EMS at 11:30 p.m. and taken then to Central Booking at 2:00 a.m. At 6:40 p.m. Det. Avery logged in § 87(2)(b) and he was released to Central Booking at 11:00 p.m.

#### **Status of Criminal Proceedings**

- § 87(2)(b), § 87(2)(a) 160.50

#### **Status of Civil Proceedings**

- § 87(2)(b) filed a notice of claim on § 87(2)(b), and is suing the city for one million dollars (encl. 22a-e).

#### **Status of IAB Investigation**



IAB indicated on May 12, 2014, that the allegation of cavity search was referred to Office of Chief of the Department. OCD advised that the case was referred to Chief of Patrol, and PO Cruz of Chief of Patrol could not locate this case in her system (encl. 25q) .

### **Civilian Criminal History**

§ 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Civilian CCRB History**

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Officer CCRB History**

- PO Brian Roby and PO Jason Ragoo have both been members of service for eight years and there are no substantiated CCRB allegations against them (encl. 2a-c).
- Sgt. Michael Elderbaum has been a member of the service for twenty-one years and there are no substantiated CCRB allegations against him (encl. 2d).

## **Conclusion**

### **Identification of Subject Officers**

PO Brian Roby fits the description provided by § 87(2)(b) as the officer who approached him with his gun drawn, and who used physical force against him during the strip search. PO Roby acknowledged pointing his gun and strip searching § 87(2)(b) § 87(2)(g)

Police documents indicate and Sgt. Elderbaum confirmed that he authorized the strip search of § 87(2)(b) § 87(2)(g)

§ 87(2)(b) alleged the “sergeant” and the dark-skinned officer used physical force against him the second time he was strip-searched. In particular, the dark-skinned officer punched him in his left eye. This same dark-skinned officer accompanied § 87(2)(b) to the hospital, and is identified as PO Ragoo on the ACR and in his own testimony. Sgt. Michael Elderbaum acknowledged physically detaining § 87(2)(b) during the strip search. § 87(2)(g)

### **Investigative Findings and Recommendations**

#### **Allegations not pleaded**

§ 87(2)(g)  
[REDACTED]  
[REDACTED]

§ 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(g)

§ 87(2)(b) said that the two officers who transported him from the scene of his arrest to the stationhouse strip-searched him in a hallway before being put in the holding cell. Police documents identify PO Gino O’Leary and PO Dimitrios Sotiriou as the officers who responded to the scene, and both of them identified themselves as the officers who transported § 87(2)(b) back to the 109<sup>th</sup> Precinct stationhouse. However, PO O’Leary and PO Sotiriou denied conducting a strip search, PO Roby stated that he was the officer who conducted this strip search, and Sgt. Kemp said she was not aware of any other officers except PO Roby, Sgt. Elderbaum, and PO Ragoo having contact with the defendants during any strip search. § 87(2)(g)

§ 87(2)(b) alleged that when § 87(2)(b) was taken out of the holding cell to be strip searched, an unidentified black male officer in plainclothes whose name § 87(2)(b) said was “Officer Debo” spoke discourteously to § 87(2)(b). § 87(2)(b) did not allege that there was any black male officer involved in his arrest, nor did he allege that any officer used profanity towards him. § 87(2)(g)

§ 87(2)(b) alleged that while the fight between himself and the officers was ongoing, he heard an officer he could not identify mention to another officer that he was going to get a taser. § 87(2)(g)

**Allegation A—Abuse of Authority: PO Brian Roby drew his gun in the vicinity of 14<sup>th</sup> Avenue and 124<sup>th</sup> Street in Queens.**

It is undisputed that upon approaching the vehicle in which § 87(2)(b)

and § 87(2)(b) were occupants, PO Roby drew his gun.

The case law has established that officers may draw their guns when they have a reasonable fear for their safety or for the safety of others *NYPD v. Gliner*, OATH Index #95/00 (encl. 1i-aa).

PO Roby testified that he ordered the occupants to show their hands, and when they complied with this order, PO Roby holstered his gun and asked § 87(2)(b) and § 87(2)(b) to exit the vehicle. PO Roby stated that he drew his gun to ensure his own safety, and holstered it upon being satisfied that none of the occupants posed an immediate threat to officer safety.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B—Abuse of Authority: Sgt. Michael Elderbaum authorized a strip search of § 87(2)(b) in the 109<sup>th</sup> Precinct stationhouse.**

It is undisputed that at some point after § 87(2)(b) was transported back to the stationhouse, Sgt. Elderbaum authorized a strip search of § 87(2)(b) to recover concealed contraband. It is also undisputed that § 87(2)(b) was engaged in a narcotics transaction on scene, had placed several bags of heroin in his waistband, and that § 87(2)(b) had bags of heroin in his underwear that were not discovered during the searches on scene and in front of the desk. Additional heroin was discovered in § 87(2)(b)'s underwear during a strip search.

§ 87(2)(b) alleged that he was strip searched once upon arriving at the stationhouse, and again approximately fifteen minutes later after he used heroin in the holding cell. PO Roby corroborated two strip searches, and confirmed that he conducted both strip searches under the authorization of Sgt. Elderbaum. Sgt. Elderbaum only attested to the second strip search in which the heroin was found. As nothing was found in the first strip search and there was no resistance, it is not unbelievable that no one else – not even Sgt. Elderbaum – recalled the strip search taking place. § 87(2)(g)

Patrol Guide procedure 208-05C describes the guidelines for conducting a strip search. “A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods” (encl. 1c-e). Case law holds that a defendant’s history of “criminal propensities,” “incriminating matter discovered during a less intrusive search,” and “indications of drug addiction” can all be factors in determining the reasonableness of a strip search *State v. Kelley* 306 A.D.2d 699; 762 N.Y.S.2d 438 (2003) (encl. 1ab-ad).

§ 87(2)(g)

The property vouchers indicate that at 7:36 p.m. PO Roby logged in ten glassines of heroin and a bag of marijuana; PO Roby stated both in his criminal court complaint and CCRB interview that these were recovered from § 87(2)(b)'s waistband and from his hand upon his arrest on scene. § 87(2)(b) claimed instead that narcotics were recovered from his waistband during the first strip search. § 87(2)(g)

In regards to the second strip search, § 87(2)(b) stated that upon discovering two bags of undiscovered heroin in his underwear, he removed a bag and ingested it nasally. Sgt. Elderbaum said he observed § 87(2)(b) on a security monitor furtively putting his hands down his underwear and he believed he was concealing contraband; Sgt. Kemp, PO Roby, and PO Ragoo all recalled hearing Sgt. Elderbaum make a statement to the effect that “He is fiddling with the front of his pants.” § 87(2)(g)

§ 87(2)(g)

**Allegation C—Force: PO Brian Roby used physical force against § 87(2)(b) inside the 109<sup>th</sup> Precinct stationhouse.**

**Allegation D—Force: Sgt. Michael Elderbaum used physical force against § 87(2)(b) inside the 109<sup>th</sup> Precinct stationhouse.**

**Allegation E—Force: PO Jason Ragoo used physical force against § 87(2)(b) inside the 109<sup>th</sup> Precinct stationhouse.**

It is undisputed that force was used against § 87(2)(b) during his strip search, and medical records confirm that § 87(2)(b) suffered a contusion to his left eye that left it swollen shut.

§ 87(2)(b) alleged that PO Ragoo took him into an individual holding cell, said, “You think I’m stupid,” and punched him in the left eye with a closed fist. PO Roby allegedly punched him repeatedly in the ribs and face, and then PO Roby, PO Ragoo, and Sgt. Elderbaum struck him with their fists and kicked him more than ten times.

Patrol Guide procedure 203-11 mandates that all members of the service at the scene of a police incident must use minimum necessary force to effect police action (encl. 1a-b).

§ 87(2)(b) stated that he held out his hands to defend himself, but denied that he struck officers back. § 87(2)(b) admittedly refused to put his hands behind his back because he feared getting hit, but eventually complied and the officers ceased using force.

PO Roby and Sgt. Elderbaum both said that as soon as § 87(2)(b)'s handcuffs were taken off, he swung his fists at the officers, striking Sgt. Elderbaum. Both Sgt. Elderbaum and PO Roby grabbed § 87(2)(b) and pushed him to the ground on his knees. Other officers ran into the room, although Sgt. Elderbaum did not know who. § 87(2)(b) resisted and was eventually placed into handcuffs. PO Roby and Sgt. Elderbaum did not believe that § 87(2)(b) was struck or punched in the face, although PO Roby said he was taken face-first to the ground. The officers described the struggle as a prolonged and violent one due to § 87(2)(b)'s size and aggression.

PO Ragoo testified that he walked into the holding cell and saw § 87(2)(b) on the ground, in handcuffs, kicking and screaming, “Fuck you, make me.” PO Ragoo did not see any officer punch or kick § 87(2)(b) and he did not observe any injuries on § 87(2)(b). He further stated that only Sgt. Elderbaum and PO Roby were involved in the altercation with § 87(2)(b).

§ 87(2)(b) heard the sounds of a physical altercation, but could not see the altercation from where he was. Shortly after he observed § 87(2)(b) whose eye was injured.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]  
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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
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